

UNITED STATES COURT OF APPEALS

MAR 3 1998

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES R. CRUCE,

Defendant - Appellant.

No. 97-3276

(D.C. No. 97-CV-3167)

(D. Kan.)

ORDER AND JUDGMENT*

Before **ANDERSON, McKAY**, and **LUCERO**, Circuit Judges.

After examining Appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Mr. James Cruce (Defendant) pled guilty to one count of conspiracy in violation of 18 U.S.C. § 371 and three counts of felony bank fraud in violation of 18 U.S.C. § 1344. Defendant was sentenced to 168 months incarceration and was ordered to pay eight

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

million dollars in restitution. Defendant filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255, contending that he was denied the effective assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution. The district court denied the motion, finding that Defendant had not met the requirements to show ineffective assistance of counsel. See Appellant's Br. App. at 240 (District Court's Memorandum and Order). Defendant then filed a Request for a Certificate of Appealability pursuant to 28 U.S.C. § 2253(c)(1)(B), which the district court denied. See id. at 279.

We have reviewed the district court's orders of August 14, 1997, and September 25, 1997; Defendant's brief and application for a certificate of appealability; and the entire record before us. Defendant's allegations of ineffective assistance of counsel are insufficient to establish a claim under the standard established in Strickland v. Washington, 466 U.S. 668, 687 (1984). See Lasiter v. Thomas, 89 F.3d 699, 703-04 (10th Cir.), cert. denied, 117 S. Ct. 493 (1996). We conclude that Defendant has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), for the same reasons set forth in the district court's order of September 25, 1997. Accordingly, we DENY Petitioner's application for a certificate of appealability and DISMISS the appeal.

Entered for the Court

Monroe G. McKay
Circuit Judge